

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11 EDDIE TILLMAN,) Case No.: 12-CV-02807-LHK
12 v. Plaintiff,) MINUTE ORDER; CASE
13) MANAGEMENT ORDER; ORDER
14) DISMISSING CASE WITH PREJUDICE
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
EDDIE TILLMAN, Plaintiff, v. ANTIOCH POLICE DEPARTMENT OFFICER BOSTICK #4356, Defendant.

Clerk: Martha Parker Brown Plaintiff: No appearance
Reporter: Gina Colin Defendant's Attorney: Noah Blechman
Length of hearing:

A case management conference was held in this case on April 2, 2014, at 2:00 p.m. Plaintiff Eddie Tillman did not appear. For the reasons stated on the record and set forth below, the Court dismissed this case with prejudice at the April 2, 2014 case management conference.

Plaintiff filed his Complaint on June 1, 2012. *See* ECF No. 1. On December 10, 2012, Plaintiff filed an "Opposition" to Defendant's Answer. ECF No. 11. On May 13, 2013, this Court appointed Haywood S. Gilliam and Jay N. Rapaport of Covington & Burling LLP as pro bono counsel for Plaintiff. ECF No. 24. On August 2, 2013, Plaintiff's pro bono counsel filed a motion

1 to withdraw. ECF No. 29.¹ The Court held a hearing on this motion to withdraw on August 29,
2 2013. ECF No. 30. At the motion hearing, the Court orally granted the motion to withdraw and set
3 a further case management conference for October 30, 2013 at 2:00 p.m. ECF No. 32. The Court
4 also ordered that “Defendant’s counsel shall serve this order on the Litigation Coordinator at San
5 Quentin State Prison. The Litigation Coordinator at San Quentin State Prison shall make Plaintiff
6 available by telephone at 2:00 p.m. on October 30, 2013 to participate in the further case
7 management conference.” *Id.* The Court further ordered that Plaintiff’s withdrawing pro bono
8 counsel “provide to Plaintiff the Pro Se Handbook available at the Northern District of California’s
9 website.” *Id.* On September 26, 2013, the Court issued a written order memorializing the hearing.
10 *Id.*

11 On October 30, 2013, the Court held a case management conference, at which Plaintiff
12 appeared pro se via telephone. ECF No. 34. Plaintiff indicated that he would shortly be released
13 from prison and that his daughter’s home address, which Plaintiff provided at the hearing, would
14 be his address upon release from prison. *Id.* The Court ordered Plaintiff to contact the Federal
15 Legal Assistance Self Help Center following his upcoming release from prison, and provided
16 Plaintiff the phone number for the San Francisco FLASH Center. *Id.* The Court also referred the
17 Plaintiff’s case to the Federal Pro Bono Project. *Id.* At the conference, Plaintiff agreed to register
18 for ECF following his anticipated release from prison in order to receive future orders and case
19 updates electronically. *Id.* The Court also set a further case management conference for February
20 12, 2014, at 2:00 p.m. *Id.* On December 18, 2013, Plaintiff filed a notice of change in address from
21 San Quentin State Prison to his daughter’s home address. ECF No. 36.

22 Plaintiff failed to file a Case Management Statement in advance of the February 12, 2014
23 Case Management Conference, as required by Civil Local Rule 16-10(d). As noted above, at the
24 Case Management Conference held on October 30, 2013, Plaintiff agreed to register for ECF once
25
26

27 ¹ In their motion to withdraw, the attorneys noted that after their appointment, they had diligently
28 worked to prepare Plaintiff’s case and met twice with Plaintiff at San Quentin State Prison, but that a
“serious issue ha[d] arisen in the case,” which the lawyers could not reveal “because of their duty to
maintain confidentiality.” ECF No. 29 at 1.

1 released from prison in order to receive future orders and provide case updates to the Court
2 electronically. ECF No. 34. Plaintiff failed to do so.

3 Further, in Defendant's February 5, 2014 Case Management Conference statement and at
4 the February 12, 2014 Case Management Conference, defense counsel reported that Defendant
5 served a request for production of documents on Plaintiff, but Plaintiff never responded. ECF No.
6 37. Defendant sent a meet and confer letter on January 27, 2014, asking Plaintiff again to provide
7 the requested documents by February 5, 2014. Defense counsel reported that Plaintiff did not
8 respond to Defendant's meet and confer letter. Plaintiff also did not attend the deposition of a
9 witness conducted by Defense counsel. Plaintiff did not appear at the Case Management
10 Conference on February 12, 2014.

11 On February 12, 2014, the Court ordered Plaintiff to show cause why this case should not
12 be dismissed with prejudice for failure to prosecute. ECF No. 38. The Court said Plaintiff had until
13 February 24, 2014 to file a response to the Order to Show Cause to explain why he failed to file a
14 Case Management Conference Statement, failed to attend the Case Management Conference on
15 February 12, 2014, failed to respond to Defendant's discovery request and meet and confer letter,
16 and failed to attend the deposition of one witness. The Court set a hearing on the Order to Show
17 Cause for Wednesday, February 26, 2014, at 2:00 p.m. The Court noted in its Order to Show Cause
18 that "Plaintiff's failure to respond to this Order and to appear at the February 26, 2014 hearing will
19 result in dismissal of this action with prejudice for failure to prosecute." ECF No. 38 at 2.

20 Plaintiff never filed a response to the Order to Show Cause. On February 26, 2014, this
21 Court held a hearing on the Order to Show Cause. Plaintiff appeared pro se and explained that he
22 was released from San Quentin in December 2013, and that he had health problems, including a
23 serious illness since his release. Accordingly, the Court vacated the Order to Show Cause on
24 February 26, 2014. ECF No. 39. At the Order to Show Cause hearing, the Court set a further case
25 management conference for April 2, 2014 at 2:00 p.m. and informed the parties in a case
26 management order that they were required to file a Joint Case Management Statement by March
27 26, 2014 for the April 2, 2014 case management conference. ECF No. 39 at 1. At the Order to
28 Show Cause hearing, Plaintiff also was ordered to register for ECF by March 12, 2014 in order to

1 receive future orders and case updates electronically. *Id.* Plaintiff informed the Court that he was
2 actively seeking new counsel and the Court thus ordered that Plaintiff's new counsel, if retained,
3 was required to file a notice of appearance with the Court by March 19, 2014. *Id.* The Court also
4 provided Plaintiff with information on how to contact the Federal Legal Assistance Help Center in
5 both San Jose and San Francisco for assistance, should Plaintiff continue in this case without legal
6 representation. *Id.*

7 Subsequent to the February 26, 2014 Order to Show Cause hearing, Plaintiff failed to
8 register for ECF by the March 12, 2014 deadline, and no counsel appeared for Plaintiff by March
9 19, 2014. Plaintiff also failed to participate in filing a Joint Case Management Statement for the
10 April 2, 2014 case management conference. ECF No. 40 (Defendant's case management statement
11 indicating that Defendant mailed a draft of his proposed case management statement to Plaintiff,
12 but that Plaintiff did not respond). Nor did Plaintiff file his own case management statement in
13 advance of the April 2, 2014 case management conference.

14 Plaintiff failed to appear at the April 2, 2014 case management conference even though
15 Plaintiff was present at the February 26, 2014 Order to Show Cause hearing, when the Court set the
16 April 2, 2014 date. On April 2, 2014, the Court waited from 2:00 p.m. to 3:21 p.m. to see if
17 Plaintiff would make an appearance, but he did not.

18 The Court reiterates that Plaintiff has failed to respond to Defendant's request for
19 production of documents served on November 13, 2013. ECF no. 40 at 3. Plaintiff did not respond
20 to Defendant's meet and confer letters sent on January 27, 2014, and on March 11, 2014. *Id.*
21 Finally, Defendant informed the Court at the April 2, 2014 case management conference that
22 Plaintiff had not produced his documents with his initial disclosures yet, even though Plaintiff's
23 previous pro bono counsel had prepared them.

24 In light of Plaintiff's failure to prosecute this case, this case is dismissed with prejudice.
25 The clerk shall close the case file.

26 **IT IS SO ORDERED.**

27 Dated: April 2, 2014



LUCY H. KOH
United States District Judge